90-1174

No. ———

JAN 18 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

SHEILA JACKSON STOSSIER,
Petitioner,
v.
GERHARD SIMON STOSSIER

Petition for a Writ of Certiorari to the Court of Appeals of Virginia

PETITION FOR A WRIT OF CERTIORARI

Of Counsel:
STEPHANIE RIDDER
6419 Ridge Drive
Bethesda, Maryland 20816
(703) 364-9536
For the WOMEN'S LEGAL DEFENSE FUND, INC.
2000 P Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 887-0364

BARBARA E. ETKIND *
JOHN C. BEITER
ROSS, DIXON & MASBACK
Columbia Square
555 Thirteenth Street, N.W.
Suite 1300 East
Washington, D.C. 20004-1109
(202) 662-2000
Counsel for Petitioner

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0095 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether the jurisdictional requirements of the Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566, 3566-74 (section 8 codified at 28 U.S.C. § 1738A) (the "PKPA"), whose express purpose is "to establish national standards under which the courts . . . will determine their jurisdiction to decide [child custody] disputes," *id.* at § 7(b), control an interstate custody dispute involving a state court's attempt to modify its own prior custody decree.

2. Whether the jurisdictional requirements of the PKPA divest a state court of continuing jurisdiction to modify its own prior custody decree when the parents and child no longer reside in that state.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT	3
1. Statement of Facts	3
2. How the Federal Question Was Presented	5
REASONS FOR GRANTING THE PETITION	6
1. THE DECISION BELOW CREATES A SQUARE CONFLICT OF AUTHORITY CONCERNING THE UNIFORM APPLICATION OF FEDERAL LAW	6
2. THE QUESTIONS PRESENTED ARE OF WIDESPREAD IMPORTANCE	10
a. The Uniform Application of the Federal Statute is of Acute Importance to Children and Parents Involved in Interstate Custody Disputes	10
b. The Decision Below Challenges the Supremacy of Federal Law	12
3. THE DECISION BELOW, WHICH COMPLETELY OVERLOOKS THE RELEVANT STATUTORY PROVISION, IS MANIFESTLY INCORRECT	14
CONCLUSION	17

TABLE OF CONTENTS—Continued

Page

APPENDIX A 1a

APPENDIX B 4a

APPENDIX C 5a

APPENDIX D 6a

APPENDIX E 7a

APPENDIX F 8a

TABLE OF AUTHORITIES

CASES — Page(s)

Archambault v. Archambault, 407 Mass. 559, 555 N.E.2d 201 (1990) 13
Beddow v. Beddow, 556 N.Y.S.2d 780 (N.Y. App. Div. 1990) 9
Biscoe v. Biscoe, 443 N.W.2d 221 (Minn. Ct. App. 1989) 9-10
Boyd v. Boyd, 653 S.W.2d 732 (Tenn. Ct. App. 1983), *permission to appeal denied*, No. 82-42-II (Tenn. June 20, 1983) 8-9
Ex parte Burrus, 136 U.S. 586 (1890) 11
California v. Superior Court, 482 U.S. 400 (1987) 14
Dahlen v. Dahlen, 393 N.W.2d 765 (N.D. 1986) 7, 14, 16
Dennis v. Dennis, 366 N.W.2d 474 (N.D. 1985) 9
Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) 12-13
Holloway v. Holloway, 519 So. 2d 531 (Ala. Civ. App. 1987) 9
In re B.B.R., 566 A.2d 1032 (D.C. 1989) 13, 16
In re Marriage of Leyda, 398 N.W.2d 815 (Iowa 1987) 13
Lloyd v. Lloyd, No. 10916 (Tenn. Ct. App. Jan. 29, 1988) (1988 WL 5686) 10
Lodge 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission, 427 U.S. 132 (1976) 13
Long v. Long, 439 N.W.2d 523 (N.D. 1989) 7-8, 16, 17
Murphy v. Woerner, 748 P.2d 749 (Alaska 1988) 13
Nielsen v. Nielsen, 472 So. 2d 133 (La. Ct. App. 1985) 9
Rexford v. Rexford, 631 P.2d 475 (Alaska 1980) 16
Sams v. Boston, 384 S.E.2d 151 (W. Va. 1989) 14
Thompson v. Thompson, 484 U.S. 174 (1988) 12, 14
Tufares v. Wright, 98 N.M. 8, 644 P.2d 522 (1982) 13
United States v. Yazell, 382 U.S. 341 (1966) 13
Voninski v. Voninski, 661 S.W.2d 872 (Tenn. Ct. App. 1982), *modified on other grounds by State ex rel. Cooper v. Hamilton*, 688 S.W.2d 821 (Tenn. 1985) 16

TABLE OF AUTHORITIES—Continued

Page(s)

Wetmore v. Markoe, 196 U.S. 68 (1904) 12
Yurgel v. Yurgel, 15 Fla. L. Weekly S566 (Fla. Nov. 1, 1990) 9, 13

CONSTITUTION

U.S. Const. art. IV, § 1 ..... 2, 14
U.S. Const. art. VI, cl. 2 ..... 2, 12

STATUTES

Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566, 3566-74 (section 8 codified at 28 U.S.C. § 1738A) .....2, *passim*
Uniform Child Custody Jurisdiction Act, 9 U.L.A. 115 (1988) 12
codified in Virginia at Va. Code Ann. §§ 20-125 to -146 (1983) 13
codified in the District of Columbia at D.C. Code Ann. §§ 16-4501 to -4524 (Supp. 1988) 15

OTHER AUTHORITIES

Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand. L. Rev. 1207 (1969) 10
3A N. Singer, *Statutes and Statutory Construction* (4th ed. 1986) 10
Note, *The Parental Kidnapping Prevention Act—Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. Sch. L. Rev. 553 (1981).. 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. ———

SHEILA JACKSON STOSSIER,
Petitioner,

v.

GERHARD SIMON STOSSIER

Petition for a Writ of Certiorari to the Court of Appeals of Virginia

---

PETITION FOR A WRIT OF CERTIORARI

Sheila Jackson Stossier petitions for a writ of certiorari to review the judgment of the Court of Appeals of Virginia in this case.

OPINION BELOW

The opinion of the Court of Appeals of Virginia (App. A, *infra*, 1a-3a) is unreported.

JURISDICTION

The Court of Appeals of Virginia entered its judgment on March 20, 1990 (App. B, *infra*, 4a), and denied a request for rehearing on April 25, 1990 (App. C, *infra*, 5a). The Supreme Court of Virginia dismissed a petition for appeal on August 21, 1990 (App. D, *infra*, 6a), and denied a petition for rehearing on September 21, 1990 (App. E, *infra*, 7a). On December 11, 1990, the Chief

Justice extended the time for filing a petition for a writ of certiorari to and including January 19, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article IV, Section 1, of the United States Constitution provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

2. Article VI, Clause 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. Sections 7 and 8 of the Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566, 3566-74 (section 8 codified at 28 U.S.C. § 1738A) (the "PKPA"), are reproduced in Appendix F, *infra*, 8a-13a. Section 8(d) of the PKPA, 28 U.S.C. § 1738A(d), provides:

> The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of [the PKPA] continues as long as [such court continues to have jurisdiction under the law of such State] and such State remains the residence of the child or of any contestant.

STATEMENT

1. Statement of Facts

a. On July 9, 1986, petitioner sought a divorce from respondent (the "father") and custody of their daughter in the Circuit Court of Virginia for the City of Alexandria (the "Circuit Court"). Jnt. App. 1-3.[1] The father moved from Virginia to the District of Columbia at about the same time. Brief of Appellee at 8.[2] The Circuit Court granted petitioner temporary custody of her daughter in September 1986. Jnt. App. 5-7. Petitioner moved from Virginia to the District of Columbia in approximately November 1986. *Id.* at 13, 69. The Circuit Court entered a Final Decree of Divorce on December 23, 1987, granting petitioner custody of her daughter. App. A, *infra*, 2a.

On August 3, 1988, petitioner filed a Complaint in the Superior Court of the District of Columbia (the "District of Columbia court"), where all parties by then resided. *Id.* In her Complaint, petitioner sought a modification of the Circuit Court's final divorce decree concerning, *inter alia*, the father's visitation rights. *Id.*[3]

More than a month later, on September 19, 1988, the father filed a motion in the Circuit Court seeking transfer of the daughter's custody to him. *Id.* Despite petitioner's pending custody modification proceeding in the District of Columbia, the Circuit Court conducted its own custody modification hearing on December 5, 1988. *Id.*

---

[1] References to the Joint Appendix filed with the Court of Appeals of Virginia are denoted herein as "Jnt. App."; references to the Appendix to this Petition are denoted as "App." Copies of the Joint Appendix have been lodged in the Office of the Clerk contemporaneously with the filing of this Petition.

[2] The Brief of Appellee was filed in the Court of Appeals of Virginia on June 19, 1989.

[3] For purposes of the PKPA, a proceeding concerning visitation rights is considered a proceeding for "custody determination." 28 U.S.C. § 1738A(b)(3).

In a Letter Opinion dated December 19, 1988, the Circuit Court concluded that custody should be transferred to the father and directed his counsel to prepare an order reflecting that ruling. *Id.* On the same day, the District of Columbia court dismissed petitioner's custody proceeding without prejudice "pending resolution of the Virginia action," *id.*, having been informed by the father previously—and, petitioner maintains, incorrectly—that the Circuit Court had "ongoing" and "pending" jurisdiction of the matter, Jnt. App. 27b-g. On January 11, 1989, the Circuit Court entered an Order transferring custody to the father. App. A, *infra*, 2a.

b. On March 20, 1990, the Court of Appeals of Virginia (the "Court of Appeals") affirmed the Circuit Court's custody modification order. The Court of Appeals stated:

> [W]e hold that the [PKPA] does not apply to this case although both parties and the child had moved from Virginia to the District of Columbia more than fifteen months prior to entry of the decree. . . .
>
> * * * *
>
> By its terms, the PKPA is not applicable to this case. The PKPA provides that "every State shall enforce . . . and shall not modify except as provided by subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of *another* State." 28 U.S.C.A. § 1738(a) (emphasis added). Thus, *the act applies only if the Virginia court was enforcing or modifying a custody determination of a court of the District of Columbia or some other state.* In this case, a Virginia court was enforcing and modifying its own decree.

App. A, *infra*, 1a-3a (second emphasis added).

Significantly, the Court of Appeals failed even to address petitioner's argument that this case is controlled by section 8(d) of the PKPA, 28 U.S.C. § 1738A(d) (custody jurisdiction continues only as long as at least one

participant remains a state resident). Having determined that the PKPA was inapplicable, the Court of Appeals went on to rule, without citation to statute or case law, that "[u]nder Virginia law, the Alexandria Circuit Court had continuing jurisdiction." App. A, *infra*, 1a.

The Court of Appeals further stated that "the only other court with jurisdiction, the District of Columbia court, relinquished jurisdiction by declining to exercise it." *Id.* at 1a-2a. In this regard, the Court of Appeals opined that the District of Columbia court had declined to exercise jurisdiction "because of the pendency" of the Virginia proceeding, "apparently in an attempt to comply with" section 8(g) of the PKPA. *Id.* at 3a.[4]

2. How the Federal Question Was Presented

Petitioner first challenged the Circuit Court's continuing jurisdiction in a post-hearing motion filed January 4, 1989, in which she argued that the Circuit Court should decline jurisdiction because the parents and child had not resided in Virginia since 1986. App. A, *infra*, 2a. In her Statement in Place of Transcript filed in the Court of Appeals on March 7, 1989, petitioner again contended that the Circuit Court lacked jurisdiction to transfer custody. Jnt. App. 75a-b. Petitioner asserted the applicability of the PKPA in her Opening Brief filed in the Court of Appeals on May 22, 1989.

---

[4] Section 8(g) provides:

> A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

28 U.S.C. § 1738A(g).

REASONS FOR GRANTING THE PETITION

The ruling of the Court of Appeals squarely conflicts with the decisions rendered by the highest courts of other States that the PKPA controls interstate child custody disputes that do not involve enforcement or modification of a sister state's decree. Resolution of this conflict is essential for two reasons. First, children and parents involved in interstate custody disputes have an acute interest in the proper functioning of the PKPA, which was enacted specifically to remedy the chaotic state of the law by prescribing uniform nationwide standards for determining jurisdiction in *all* such disputes. Second, by ignoring the dispositive provision of the PKPA and instead relying solely upon state law, the opinion below effectively challenges the constitutional supremacy of federal law and Congress' authority to enact such law.

Finally, the Court of Appeals' decision is manifestly incorrect and cannot be reconciled with the plain language of the PKPA or Congress' express findings and declaration of purposes in enacting the statute. The Court of Appeals' broad and unprecedented limitation on the PKPA's applicability, in fact, effects the very evil that Congress sought to correct.

1. THE DECISION BELOW CREATES A SQUARE CONFLICT OF AUTHORITY CONCERNING THE UNIFORM APPLICATION OF FEDERAL LAW.

A square conflict exists between the decision of the Court of Appeals in this case and those of the highest courts of other States that have found the PKPA applicable where, as here, a court was requested to modify its own prior custody decree and no custody decree of a sister state was at issue. Most significantly, the Supreme Court of North Dakota twice has correctly ruled, on substantially indistinguishable facts, that section 8(d) of the PKPA divested that State of jurisdiction to modify its own prior decree after the parents and children had left the State.

In *Dahlen v. Dahlen*, 393 N.W.2d 765 (N.D. 1986), the North Dakota trial court in 1982 had awarded custody of the parties' children to the mother. By June 1984, all of the participants had moved out-of-state. Nevertheless, in 1985 the father made an ex parte motion in the North Dakota court for a transfer of custody to him. Finding that it had continuing jurisdiction over the matter under both state law and the terms of the original decree, the court temporarily granted, but later denied, the father's motion. *Id.* at 766-67.

The Supreme Court of North Dakota reversed on the ground that, at the time of the father's motion, it was undisputed that North Dakota no longer was the residence of the children or parents. The court concluded that, because the requirements of section 8(d) *must* be met for a court to retain continuing jurisdiction, the absence of residency was dispositive and divested the trial court of authority to modify its initial decree. *Id.* at 768-69 & n.5.[5]

In *Long v. Long*, 439 N.W.2d 523 (N.D. 1989), custody of the parties' children had been awarded to the mother in North Dakota in 1979. By 1980, all of the participants had left the State. When the father requested that the trial court modify his visitation rights in 1987, the mother moved the court to decline jurisdiction and began separate proceedings in Minnesota. The Minnesota court, however, dismissed the mother's action, finding that North Dakota retained continuing jurisdiction. *Id.* at 523-24. Granting the father's motion for a custody modification, the North Dakota trial court noted that "Minnesota acceded to the continuation of North Dakota jurisdiction despite the fact that both parties had removed their residence from North Dakota." *Id.* at 525.

---

[5] The court addressed the jurisdictional question *sua sponte*, neither party having raised the issue during the modification proceeding or on appeal. *Id.* at 766-67.

The Supreme Court of North Dakota vacated the custody modification, reasoning, under *Dahlen*, that section 8(d) had divested the trial court of continuing jurisdiction because all of the participants had resided out-of-state since 1980. *Id.* at 524-25.[6] Significantly, the court's analysis under section 8(d) was affected neither by the trial court's prior stated intent to retain jurisdiction (*see* note 6), nor by the nonresident parties' continued acquiescence in the trial court's exercise of jurisdiction, nor by the sister State's mistaken declination of jurisdiction, *id.* at 525-26—all of which factors the Court of Appeals relied upon in this case, *see* notes 11 and 12, *infra*.[6]

Contrary to the rule announced by the Court of Appeals in this case, the Supreme Court of North Dakota in *Dahlen* and *Long* found section 8(d) to be *dispositive*, even though the trial courts in both of those cases clearly were *not* "enforcing or modifying a custody determination of a court of . . . some other state." App. A, *infra*, 3a. Thus, in both North Dakota cases, because none of the participants remained in the State, the trial courts were divested of continuing jurisdiction. *Cf. Boyd v. Boyd*, 653 S.W.2d 732, 737-38 (Tenn. Ct. App. 1983), *permission to appeal denied*, No. 82-42-II (Tenn. June 20, 1983) (no foreign decree at issue; forum State court divested of continuing jurisdiction to modify its prior decree, even though one parent remained in-state, be-

---

[6] Earlier, in 1986, having determined that it had jurisdiction and that it intended "to retain custody" of the matter, the trial court rendered an initial modification of the original custody decree. 439 N.W.2d at 523. Although the trial court's jurisdiction to render the 1986 custody modification was never contested and was not the subject of the appeal in *Long*, the Supreme Court of North Dakota, citing *Dahlen*, acknowledged that "it is the duty of this court to raise jurisdictional issues sua sponte whenever they appear on the record." *Id.* at 526 n.6. Because the court "prefer[red] to proceed cautiously," however, it deferred the issue pending the parties' proceeding under N.D. R. Civ. P. 60(b)(iv). *Id.*

cause additional jurisdictional requirements of section 8(d) were not met).[7]

The Supreme Court of Florida also has correctly concluded that the PKPA's jurisdictional requirements control the existence of continuing jurisdiction in interstate custody disputes that do not concern the enforcement or modification of a sister state's decree. In *Yurgel v. Yurgel*, 15 Fla. L. Weekly S566, S568 (Fla. Nov. 1, 1990), custody of the parties' children had been awarded to the father in Florida in 1986. The father and children moved out-of-state shortly thereafter but the mother remained in Florida. Responding to certified questions concerning the Florida trial court's continuing jurisdiction to entertain the mother's subsequent motion for custody modification, the Supreme Court of Florida stated that, where Florida meets all other jurisdictional requirements and at least one participant remains there, the Florida trial court retains continuing authority until, *inter alia*, "jurisdiction is terminated by operation of the PKPA."[8]

---

[7] *See also Holloway v. Holloway*, 519 So. 2d 531, 532 (Ala. Civ. App. 1987) (no foreign decree at issue; under section 8(d), trial court did not err in finding that it lacked continuing jurisdiction to modify prior Alabama decree when all parties had left the State); *Beddow v. Beddow*, 556 N.Y.S.2d 780, 781 (N.Y. App. Div. 1990) (no foreign decree at issue; jurisdiction of court that conducted initial custody proceeding "cannot be continued since [the initial forum State] is no longer the residence of the children or of either of the contestants" under section 8(d)).

[8] *See also Dennis v. Dennis*, 366 N.W.2d 474, 475-76 (N.D. 1985) (no foreign decree at issue; although one parent remained in forum State, case remanded for determination whether forum State court met other requirements of section 8(d) to exercise continuing jurisdiction to modify its prior decree); *Nielsen v. Nielsen*, 472 So. 2d 133, 136 (La. Ct. App. 1985) (no foreign decree at issue; forum State court maintained continuing jurisdiction to modify its prior decree under section 8(d), but properly declined its exercise); *Biscoe v. Biscoe*, 443 N.W.2d 221, 225 (Minn. Ct. App. 1989) (no foreign decree at issue; forum State court has continuing jurisdiction to modify its prior decree if requirements of section 8(d) are

As is apparent from the foregoing citations, the decisions of various courts, all interpreting the same federal statute, have produced markedly different results in similar cases. Given the state courts' historical propensity to assert child custody jurisdiction even in questionable cases, *see, e.g.*, Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand. L. Rev. 1207, 1210-11 (1969), this untenable state of affairs—in which the PKPA is given widely varying interpretations in different courthouses—is likely to persist absent this Court's intervention.

2. THE QUESTIONS PRESENTED ARE OF WIDESPREAD IMPORTANCE.

a. The Uniform Application of the Federal Statute is of Acute Importance to Children and Parents Involved in Interstate Custody Disputes.

The issue whether the PKPA controls all interstate child custody disputes—or only those concerning enforcement and modification of sister states' decrees—is of widespread and acute importance to custody contestants nationwide and, more significantly, to the children who are the subjects of such disputes. As one commentator has noted, "[n]o interests secured by law are of more fundamental importance to individuals and to society than interests of the family in particular and in domestic relations in general. For this reason, they have been the subject of extensive and continuing legislative attention." 3A N. Singer, *Statutes and Statutory Construction* § 68.01, at 379 (4th ed. 1986).

The formulation of *substantive* rules for determining custody based upon the child's best interests historically

---

met; remanded for further findings); *Lloyd v. Lloyd*, No. 10916, slip op. at 4 (Tenn. Ct. App. Jan. 29, 1988) (1988 WL 5686) (no foreign decree at issue; forum State court maintained continuing jurisdiction to modify its prior decree under section 8(d)).

and properly has been left to the competence of the states. *See, e.g., Ex parte Burrus*, 136 U.S. 586, 593-94 (1890). Congress, however, has perceived a need to bring order to the chaos attendant to the "often inconsistent and conflicting" laws and practices by which the courts determine their *jurisdiction* in the first instance to decide such disputes. Pub. L. No. 96-611, § 7(a)(2), 94 Stat. 3566, 3568. Congress determined that such inconsistency and conflict in jurisdictional rules often spawned excessive relitigation resulting, *inter alia*, in "the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions . . ., and harm to the welfare of children and their parents and other custodians." *Id.* at § 7(a)(4).

For these reasons, Congress found it "necessary . . . to establish *national standards* under which the courts . . . will determine their jurisdiction to decide [child custody] disputes and the effect to be given by each . . . jurisdiction to [the] decisions by the courts of other . . . jurisdictions." *Id.* at § 7(b) (emphasis added). The general purposes of the PKPA announced by Congress include:

(1) "promot[ing] cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child," *id.* at § 7(c)(1);

(2) "discourag[ing] continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child," *id.* at § 7(c)(4); and

(3) "avoid[ing] jurisdictional competition and conflict between State courts in matters of child custody and visitation," *id.* at § 7(c)(5).

The gravity of the interests sought to be vindicated by Congress and impinged upon by the Court of Appeals'

unprecedented narrowing of the PKPA's jurisdictional ambit can hardly be overstated. The Court of Appeals' ruling, if left standing, would represent an initial step in a retreat back to the chaotic state of the pre-PKPA law, in which each state again would be left to establish and interpret its own jurisdictional prerequisites in interstate custody disputes.[9] In light of Congress' express intent to establish uniformity in this area, the Court's guidance is necessary to define authoritatively the obligations of state courts in accommodating the federal and state interests implicated by the PKPA.

b. The Decision Below Challenges the Supremacy of Federal Law.

The decision below also raises issues of constitutional magnitude. Specifically, the Court of Appeals' refusal to apply the relevant provisions of the PKPA stands as a direct challenge to the supremacy of federal law in this area in at least two regards. First, as a fundamental proposition of constitutional law, under the Supremacy Clause, U.S. Const. art. VI, cl. 2, a federal statute preempts any state statute in the same field with which it conflicts. *See, e.g., Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (federal law preempts state family law when "Congress has 'positively required [it] by direct enactment' ") (quoting *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904)); *id.* (Supremacy Clause requires pre-

[9] As this Court has recognized, prior to passage of the PKPA, numerous states had attempted to establish nationwide conformity in jurisdictional rules by enacting the Uniform Child Custody Jurisdiction Act, 9 U.L.A. 115 (1988) (the "UCCJA"). *Thompson v. Thompson*, 484 U.S. 174, 181 (1988). "The project foundered, however, because a number of States refused to enact the UCCJA while others enacted it with modifications." *Id.* This inconsistency was further aggravated by the often varying interpretations given to identical statutory language by the courts of states that had adopted the UCCJA. *See, e.g.*, Note, *The Parental Kidnapping Prevention Act—Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. Sch. L. Rev. 553, 564-65 (1981).

emption of state family law that does " 'major damage' to 'clear and substantial' federal interests") (quoting *United States v. Yazell*, 382 U.S. 341, 352 (1966)); *see generally Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 139 (1976).

In this case, the PKPA preempts Virginia jurisdictional rules as applied by the Court of Appeals. Specifically, as noted above, section 8(d) divests a court of continuing custody jurisdiction when all of the parties have left the state. The Court of Appeals, however, ignoring section 8(d), found that, under some unidentified provision of Virginia law, the parties' absence from Virginia did not preclude continuing jurisdiction. App. A, *infra*, 1a. The strict "bright line" rule of section 8(d) concerning continuing jurisdiction cannot be reconciled with, and therefore supersedes, the unarticulated and undefined requirements of Virginia law as educed by the Court of Appeals.[10] By finding the PKPA inapplicable and instead relying solely upon Virginia law, the Court of Appeals effectively circumvented federal law, a tactic that flies squarely in the face of its constitutional mandate. *See, e.g., Murphy v. Woerner*, 748 P.2d 749, 750 (Alaska 1988) (PKPA preempts state law to the extent that they conflict); *In re B.B.R.*, 566 A.2d 1032, 1036 n.10 (D.C. 1989) (same); *Yurgel v. Yurgel*, 15 Fla. L. Weekly S566, S567 (Fla. Nov. 1, 1990) (same); *In re Marriage of Leyda*, 398 N.W.2d 815, 819 (Iowa 1987) (same); *Archambault v. Archambault*, 407 Mass. 559, 555 N.E.2d 201, 204-08 (1990) (same); *Tufares v. Wright*, 98 N.M. 8, 644 P.2d 522, 524 (1982) (same);

---

[10] Assuming, for the sake of argument, that the Court of Appeals relied upon the UCCJA, adopted in Virginia at Va. Code Ann. §§ 20-125 to -146 (1983), the stricter "residency" requirement of section 8(d) nonetheless would preempt the relevant UCCJA provision, which grants jurisdiction even when nonresident participants have merely "a significant connection" with Virginia. *See* Va. Code Ann. § 20-126(A)(2).

Dahlen v. Dahlen, 393 N.W.2d 765, 767 (N.D. 1986) (same; applying section 8(d)); *Sams v. Boston*, 384 S.E.2d 151, 156 (W. Va. 1989) (PKPA preempts state law to the extent that they conflict); *cf. Thompson v. Thompson*, 484 U.S. 174, 180-81 (1988) (PKPA enacted to establish uniform national standards in light of varying state custody jurisdiction rules); *see generally* Pub. L. No. 96-611, § 7(b), 94 Stat. 3566, 3569.

Second, the Court of Appeals' decision unduly impinges upon Congress' constitutional prerogative to legislate in this area, most particularly to "prescribe the manner in which . . . Acts, Records and Proceedings [of each state] shall be proved, and the Effect thereof" under the Full Faith and Credit Clause. U.S. Const. art. IV, § 1. As this Court has recognized, a chief aim of Congress in enacting the PKPA "was to extend the requirements of the Full Faith and Credit Clause to custody determinations" made in accordance with the statute's jurisdictional requirements. *Thompson*, 484 U.S. at 182; *see also California v. Superior Court*, 482 U.S. 400, 421 (1987) (Stevens & Brennan, JJ., dissenting). The Court of Appeals' failure to apply the PKPA effectively thwarts the statute's constitutional imperative, and for that additional reason calls for this Court's intervention.

3. THE DECISION BELOW, WHICH COMPLETELY OVERLOOKS THE RELEVANT STATUTORY PROVISION, IS MANIFESTLY INCORRECT.

As the authorities cited above suggest, the Court of Appeals' unduly narrow reading of the PKPA's jurisdictional ambit is manifestly incorrect. First, the statute nowhere indicates, either expressly or implicitly, that it is intended to apply only to those interstate disputes that involve the enforcement or modification of sister states' custody decrees. On the contrary, Congress indicated, without qualification, that the PKPA was enacted, *inter alia*, to prescribe nationwide jurisdictional rules in *all* interstate custody disputes. Pub. L. No. 96-611, § 7(b), 94 Stat. 3566, 3569. Congress gave no indication that it in-

tended to exempt from the PKPA's purview cases such as this one, which concern a court's continuing jurisdiction to modify its own prior custody decree where no other state's decree is at issue.

Second, the Court of Appeals' analysis, which concentrated solely upon section 8(a) of the PKPA, 28 U.S.C. § 1738A(a), simply did not go far enough. As acknowledged in the cases cited *supra*, at 6-10, a fair reading of the PKPA leads inevitably to the conclusion that section 8(d), by its terms, is the provision of the statute that is applicable to the type of dispute that is involved in this case. Under section 8(d), jurisdiction continues only so long as, *inter alia*, the state remains the residence of the child or at least one contestant. 28 U.S.C. § 1738A(d). Consequently, a court is divested of jurisdiction to modify its prior decree when the parents and children have left the state, as is concededly the case here.

Finally, the decision below also cannot be sustained on the basis of section 8(g) of the PKPA, as the Court of Appeals suggested. App. A, *infra*, 3a. On the contrary, in light of the pending custody proceeding in the District of Columbia, the Circuit Court's exercise of jurisdiction clearly violated the requirement of section 8(g) that full faith and credit be afforded to the proceedings of sister states that conform with the provisions of the PKPA. (Section 8(g) is quoted in full at note 4, *supra*.)

In September 1988, when the father moved in the Circuit Court for a modification of that court's prior decree, the District of Columbia Court had jurisdiction to modify the initial Virginia custody decree pursuant to section 8(f) of the PKPA, 28 U.S.C. § 1738A(f), because: (1) the District of Columbia had "home state" jurisdiction over the daughter's custody, *see* 28 U.S.C. §§ 1738A(c)(1), (c)(2)(A)(i); D.C. Code Ann. § 16-4503(a)(1) (Supp. 1988) (codifying UCCJA), and (2) the Circuit Court had lost continuing jurisdiction under section 8(d) nearly

two years earlier when all of the participants concededly had left Virginia. *See* 28 U.S.C. § 1738A(f).[11] Because the District of Columbia court was exercising jurisdiction consistently with the PKPA's provisions in September 1988, the Circuit Court's contemporaneous attempt to exercise jurisdiction violated the clear proscription of section 8(g).[12] The Court of Appeals' erroneous sugges-

---

[11] The fact that the parties subsequently submitted themselves to the *personal* jurisdiction of the Circuit Court is irrelevant to the analysis of *subject matter* jurisdiction under the PKPA. *See, e.g., Long v. Long*, 439 N.W.2d 523, 525 (N.D. 1989) ("The PKPA and the UCCJA set forth the jurisdictional requirements to modify a custody determination, and neither confers jurisdiction by stipulation, agreement or consent of the parties or the court.") (citations omitted).

Similarly, the Circuit Court's mere intention to retain subject matter jurisdiction to conduct proceedings subsequent to its initial decree cannot supersede the PKPA's jurisdictional requirements. *See id.; Dahlen v. Dahlen*, 393 N.W.2d 765, 766-67 & n.1 (N.D. 1986) (initial forum State's purported retention of continuing jurisdiction "is contrary to the provisions of the PKPA and the [UCCJA], and could not vest the court with jurisdiction"); *Voninski v. Voninski*, 661 S.W.2d 872, 882 (Tenn. Ct. App. 1982), *modified on other grounds by State ex rel. Cooper v. Hamilton*, 688 S.W.2d 821 (Tenn. 1985) ("[t]he mere intention of the parties and the . . . court to have that court retain jurisdiction does not meet the explicit jurisdictional prerequisites of [the PKPA and the UCCJA] and is insufficient to confer jurisdiction . . . when federal and state law is to the contrary"). Indeed, if a court's purported retention of authority were a sufficient basis for such jurisdiction, the PKPA's requirements would be rendered meaningless.

[12] The criteria supporting child custody jurisdiction under the PKPA must be present at the *commencement* of the relevant proceeding—in this case, the Virginia modification proceeding initiated in September 1988—occurrences later in time being irrelevant to the inquiry. *See, e.g., In re B.B.R.*, 566 A.2d 1032, 1038-40 (D.C. 1989); *cf. Rexford v. Rexford*, 631 P.2d 475, 478 (Alaska 1980) (interpreting UCCJA). The District of Columbia court's dismissal of petitioner's pending proceeding on December 19, 1988—*after* the father initiated the Virginia custody modification proceeding, *after* the modification hearing, and on *the same day* that the Circuit Court issued its Letter Opinion—was rendered well beyond the

tion that *the District of Columbia* properly relinquished jurisdiction during the pendency of the *Virginia* proceeding also warrants review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Of Counsel:
STEPHANIE RIDDER
6419 Ridge Drive
Bethesda, Maryland 20816
(703) 364-9536
For the WOMEN'S LEGAL DEFENSE FUND, INC.
2000 P Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 887-0364

BARBARA E. ETKIND *
JOHN C. BEITER
ROSS, DIXON & MASBACK
Columbia Square
555 Thirteenth Street, N.W.
Suite 1300 East
Washington, D.C. 20004-1109
(202) 662-2000
Counsel for Petitioner

* Counsel of Record

January 1991

---

time at which the Circuit Court was required to determine whether it had continuing jurisdiction and, thus, is irrelevant as a matter of law. In any event, the District of Columbia dismissal without prejudice is not of the type that would vest Virginia with jurisdiction under the PKPA, because the District of Columbia court nowhere indicated that its order was based "on the ground that [Virginia was] the more appropriate forum to determine the custody of the child." *See* 28 U.S.C. § 1738A(c)(2)(D); *Long v. Long*, 439 N.W.2d 523, 525-26 (N.D. 1989).

APPENDICES

APPENDIX A

COURT OF APPEALS OF VIRGINIA

Present: Judges Duff, Keenan and Moon

Argued at Alexandria, Virginia

Record No. 0184-89-4

SHELIA JACKSON STOSSIER

v.

GERHARD SIMON STOSSIER

From the Circuit Court of the City of Alexandria
Donald H. Kent, Judge

MEMORANDUM OPINION BY
JUDGE NORMAN K. MOON
March 20, 1990

John C. Beiter (Ross, Dixon & Masback, on brief), for appellant.

Sharron A. FitzGerald, for appellee.

Sheila Jackson Stossier seeks reversal of a decree of the Circuit Court of the City of Alexandria which transferred custody of her child to the child's father. In affirming the decree, we hold that the Parental Kidnapping Prevention Act (PKPA) does not apply to this case although both parties and the child had moved from Virginia to the District of Columbia more than fifteen months prior to entry of the decree. Under Virginia law, the Alexandria Circuit Court had continuing jurisdiction and the only other court with jurisdiction, the District of

Columbia court, relinquished jurisdiction by declining to exercise it.

While living in Alexandria, the parties separated on July 1, 1986. In the final divorce decree of December 23, 1987, was entered after the parties and their daughter became residents of the District of Columbia. The Alexandria Circuit Court granted custody to the mother with liberal visitation to the father, but provided that the initial custody determination would be reviewed on June 8, 1988. Thus, the case was not dismissed from the docket.

On August 3, 1988, the mother filed a complaint in the Superior Court of the District of Columbia seeking increased child support and modification of the Alexandria Circuit Court's visitation order. On September 19, 1988, the father filed a motion with the Alexandria Circuit Court seeking to obtain custody. On December 5, 1988, the Circuit Court of Alexandria conducted a hearing, after which the judge directed in a letter opinion dated December 19, 1988, the father's counsel to prepare an order granting custody to the father. On December 19, 1988, the District of Columbia Court dismissed the mother's case without prejudice pending resolution of the Virginia action. On January 4, 1989, the mother filed in the Alexandria Circuit Court a notice and "Motion to Dismiss *Nunc Pro Tunc* or in the Alternative Motion to Stay the Custody Order Pending Appeal." In her motion, she asserted for the first time that the Alexandria Circuit Court should decline jurisdiction because all parties had resided in the District of Columbia since November, 1986. On January 11, 1989, the Alexandria Circuit Court entered the order appealed from, transfering custody to the father.

By its terms, the PKPA is not applicable to this case. The PKPA provides that "every State shall enforce . . . and shall not modify except as provided by subsection (f) of this section, any child custody determination made

consistently with the provisions of this section by a court of *another* State." 28 U.S.C.A. § 1738A(a) (emphasis added.) Thus, the act applies only if the Virginia court was enforcing or modifying a custody determination of a court of the District of Columbia or some other state. In this case, a Virginia court was enforcing and modifying its own decree.

The PKPA also provides "[a] court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination." 28 U.S.C.A. § 1738A(g). In this case, under Virginia law the Alexandria Circuit Court had jurisdiction at the time of the commencement of the initial custody proceeding. By the terms of the December 23, 1987, decree, the court did not dismiss the case but continued it for further proceedings on June 8, 1988. The parties were back in court in June, 1988, seeking a modification of visitation so that the child might visit her paternal grandparents in Austria. The parties also agreed to mediation under the auspices of the Department of Social Services for the City of Alexandria. While these proceedings were ongoing, an action was filed in the District of Columbia seeking to modify visitation and child support. The District of Columbia court, apparently in an attempt to comply with Subparagraph (g) of the PKPA, declined to exercise jurisdiction because of the pendency of the proceeding in Virginia.

Accordingly, because the PKPA does not apply to this case, the judgment appealed from is affirmed.

Affirmed.

APPENDIX B

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 20th day of March, 1990.

Record No. 0184-89-4
Circuit Court No. CH-17026

SHEILA JACKSON STOSSIER,
Appellant,

against

GERHARD SIMON STOSSIER,
Appellee.

Upon an appeal of right from a judgment rendered by the Circuit Court of the City of Alexandria on the 11th day of January, 1989.

Before Judges Duff, Keenan and Moon

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the trial court.

A Copy,
Teste:

PATRICIA G. DAVIS,
Clerk

By: /s/ Cynthia L. McCoy
Deputy Clerk

APPENDIX C

VIRGINIA:

In the Court of Appeals of Virginia on Wednesday the 25th day of April, 1990.

Record No. 0184-89-4
Circuit Court No. CH-17026

SHEILA JACKSON STOSSIER,
Appellant,

against

GERHARD SIMON STOSSIER,
Appellee.

Upon a Petition for Rehearing En Banc
Before the Full Court

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 20th day of March, 1990 and grant a rehearing en banc thereof, the said petition is denied on the grounds that there is no dissent in the panel decision, no member of the panel has certified that the decision is in conflict with a prior decision of the Court, nor has a majority of the Court determined that it is appropriate to grant the petition for rehearing en banc in this case. Code § 17-116.02(D).

A Copy,
Teste:

PATRICIA G. DAVIS,
Clerk

By: /s/ Cynthia L. McCoy
Deputy Clerk

APPENDIX D

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 21st day of August, 1990.

Record No. 900697
Court of Appeals No. 0184-89-4

SHEILA JACKSON STOSSIER,
Appellant,

against

GERHARD SIMON STOSSIER,
Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court dismisses the petition for appeal. Code § 17-116.07(A)(3).

A Copy,
Teste:

DAVID B. BEACH,
Clerk

By: /s/ [Illegible]
Deputy Clerk

APPENDIX E

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of September, 1990.

Record No. 900697
Court of Appeals No. 0184-89-4

SHEILA JACKSON STOSSIER,
Appellant,

against

GERHARD SIMON STOSSIER,
Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 21st day of August, 1990 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste:

/s/ David B. Beach
Clerk

APPENDIX F

STATUTORY PROVISIONS INVOLVED

1. Section 8 of the Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 8, 94 Stat. 3566, 3569-71 (codified at 28 U.S.C. § 1738A) (the "PKPA"), provides:

Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child; and

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best inter-

est of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c) (1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall

be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

2. Section 7 of the PKPA, Pub. L. No. 96-611, § 7, 94 Stat. 3566, 3568-69, provides:

Findings and Purposes

(a) The Congress finds that—

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

(c) The general purposes of sections 6 to 10 of this Act are to—

(1) promote cooperation between State courts to the end that a determination of custody and visita-

tion is rendered in the State which can best decide the case in the interest of the child;

(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

(3) facilitate the enforcement of custody and visitation decrees of sister States;

(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

Supreme Court, U.S.
FILED
APR 2 1991
OFFICE OF THE CLERK

No. 90-1174

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

SHEILA JACKSON STOSSIER,
Petitioner,

v.

GERHARD SIMON STOSSIER,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Virginia

---

BRIEF OF RESPONDENT IN OPPOSITION

PAUL M. SMITH
Counsel of Record
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184

SHARRON FITZGERALD
700 North Fairfax Street
Suite 304
Alexandria, VA 22314
Counsel for Respondent

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
STATEMENT	2
ARGUMENT	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

Dahlen v. Dahlen, 393 N.W.2d 765 (N.D. 1986)	6
Long v. Long, 439 N.W.2d 523 (N.D. 1989)	6
Yurgel v. Yurgel, 15 Fla. L. Weekly S566 (Fla. Nov. 2, 1990)	6

Statutes:

28 U.S.C. § 1738A	3
28 U.S.C. § 1738A (c) (2)	8
28 U.S.C. § 1738A (c) (2) (A)	4
28 U.S.C. § 1738A (c) (2) (D)	6
28 U.S.C. § 1738A (d)	5, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1174

SHEILA JACKSON STOSSIER,
Petitioner,

v.

GERHARD SIMON STOSSIER,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Virginia

---

BRIEF OF RESPONDENT IN OPPOSITION

Respondent Gerhard Stossier submits this brief in opposition to the petition for a writ of certiorari filed by Sheila Stossier, his ex-wife. The decision below—an unpublished ruling of the Virginia Court of Appeals arising out of a routine child custody dispute—applied the jurisdictional provisions of the Parental Kidnapping Prevention Act to an unusual set of facts and reached an outcome that was neither wrong nor inconsistent with rulings in other states. Moreover, even if this Court were to reverse that decision, subsequent events make it very likely that the very same judgment would ultimately be reinstated. For these reasons, the case clearly does not warrant further review.

STATEMENT

Petitioner and respondent were married and living together with their daughter in Virginia until July 1986, when respondent moved to the District of Columbia and petitioner filed a divorce action in a Virginia circuit court. A consent order granted temporary custody of the child to petitioner in September 1986, and she moved with her daughter to the District of Columbia in November 1986. During the following months, petitioner was found in contempt of court repeatedly for willful failure to cooperate with the visitation rights of respondent.

On December 23, 1987, the circuit court entered a final decree of divorce and granted continued custody of the daughter to petitioner. J.A. 15.[1] Because of petitioner's previous behavior, however, the court stated that the custody determination would be further reviewed on June 8, 1988, and the case was retained on the docket. J.A. 19-20. In June, respondent renewed his request for custody in the circuit court. J.A. 22. Before that motion was brought on for hearing, the parties agreed to participate in the circuit court's mediation program. J.A. 23.

On August 3, 1988, petitioner filed an action in D.C. Superior Court seeking an increase in her child support payments. Respondent, in turn, scheduled his custody motion for hearing in the Virginia circuit court on September 28, 1988. J.A. 28. After some additional delays, on December 5, 1988, the circuit court conducted an evidentiary hearing on the custody issue. Based on testimony and a report from a guardian *ad litem*, the circuit court on December 19, 1988, directed respondent to prepare an order granting permanent custody to him. J.A. 66. That same day, the D.C. Superior Court entered an order indicating that it would "abstain" from hear-

---

[1] "J.A." cites are to the joint appendix in the Virginia Court of Appeals.

ing the matter in light of the pending Virginia action and dismissing the action without prejudice on that basis.

It was only in January 1989 that petitioner, having lost on the merits of the custody issue, for the first time raised the issue of jurisdiction in the Virginia circuit court. Her motion to dismiss *nunc pro tunc* was denied, and the court entered an order awarding custody to respondent on January 11, 1989. J.A. 71.

Petitioner appealed to the Virginia Court of Appeals,[2] which affirmed in an unpublished opinion. In the final paragraph of that opinion, the court relied on three facts: (1) the Virginia circuit court had valid jurisdiction at the time the action was filed, (2) the action remained ongoing continuously in the Virginia courts until January 1989 since the court's previous custody orders had all been expressly provisional, and (3) the D.C. Superior Court had declined jurisdiction over the matter. *See* Pet. App. 3a. Based on these facts, the court held that Section 8 of the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A, did not bar the circuit court from making a custody determination even though all parties had previously left the state. The Virginia Supreme Court dismissed a subsequent petition for appeal.

---

[2] In the meantime, petitioner refused to turn over custody of her daughter until the circuit court had her arrested for willful defiance of its decision.

ARGUMENT

This case does not warrant further review for three reasons. First, the Virginia Court of Appeals did not adopt the reading of the PKPA alleged by petitioner when it approved retention of jurisdiction in the unusual circumstances presented here. Second, for that and other reasons, it is untenable to suggest that this case creates a serious conflict among the state courts requiring resolution by this Court. Finally, since respondent and the daughter have now returned to Virginia and petitioner has moved to Maryland, even a reversal in this Court would, in all likelihood, lead to a decision by the Virginia courts to retain jurisdiction and reinstate the existing custody order.

1. Petitioner's entire argument construes the ruling below as a holding that, once a custody proceeding is over and has resulted in a custody order, the court that entered that order may entertain a motion to modify even after all parties have moved from the jurisdiction. Pet. 6. But that is not what the Virginia courts held. Petitioner's argument simply ignores the significance of the key facts relied on by the Virginia Court of Appeals.

In that court, this case was not seen as involving jurisdiction to entertain a new challenge to a facially final, unconditional custody determination. The court below emphasized that Virginia, as the then-current residence of petitioner and her daughter, had undisputed jurisdiction over this custody proceeding at the time it was initiated in 1986. Pet. App. 3a.[3] It then recognized that the December 23, 1987 order granting custody to petitioner by its terms "did not dismiss the case but continued it for further proceedings." *Id.* Those "further

---

[3] *See* 28 U.S.C. § 1738A(c)(2)(A) (court may make child-custody determination if in a state that was "the home state of the child *on the date of the commencement of the proceeding*") (emphasis added).

proceedings," of course, were the pre-scheduled six-month review of the custody issue that ultimately led to the final award of custody to respondent. In sum, the court below viewed the case as involving a single, ongoing proceeding extending from 1986 to 1989.

The Virginia circuit court's retention of jurisdiction in these circumstances did not, contrary to petitioner's claim, contravene section 8(d) of the PKPA, 28 U.S.C. § 1738A (d). That section provides that the jurisdiction of a court of a state that "has made a child custody determination . . . continues as long as . . . such State remains the residence of the child or of any contestant." *Id.* The provision is reasonably read not to come into play until *after* the court has made a final custody determination. Indeed, even petitioner apparently would concede that the PKPA allows a court, once vested with valid jurisdiction, to arrive at a final determination about custody—despite the fact that all parties may leave the state in the interim.[4] In this case, as we have noted, there was a single continuous proceeding that did not culminate in a final custody determination until January 1989.

---

[4] After all, petitioner's claim is premised on the December 23, 1987 granting custody to her, which itself came more than a year after all parties had left Virginia.

The alternative interpretation—that Section 8(d) cuts off jurisdiction in the midst of a proceeding the instant the last party moves out of state—would make no sense. Subsection (d) only comes into play *after* a court "has made a child custody determination." It cannot, therefore, support a universal requirement of current party residence throughout every proceeding. Moreover, such a rule would empower the last party in residence in a state, during a proceeding, to manipulate jurisdiction to his or her advantage. The party could stay in residence as long as the court was favorably inclined but leave and cut off jurisdiction—even in the midst of a hearing—if matters took a negative turn. Such interstate movement for litigation-related reasons was one of the evils Congress sought to prevent through the PKPA. *See* Pet. App. 11a-13a (Congressional findings and declaration of purposes).

These facts obviously distinguish this case from the cases from other states cited by petitioner. Those cases exemplify the far more usual situation where a final custody order is entered, and a new action for modification is initiated in the same court years later.[5] In such a case, under 28 U.S.C. § 1738A(d), the court's power to entertain the modification action cannot derive from a theory of continued jurisdiction over the original decree, if all parties have since left the state.

Nothing in the decision below suggests that Virginia courts would disregard this clear rule on the same facts. The court below simply saw this case as falling in a different category—the category of a validly initiated, continuous proceeding that did not reach a final resolution until the custody award to respondent. That decision —about the proper treatment under the PKPA of the unusual facts presented here—clearly does not merit this Court's review.

Furthermore, the court below suggested an alternative jurisdictional basis that petitioner mentions only in passing. The court noted that the D.C. Superior Court "declined to exercise jurisdiction because of the pendency of the proceeding in Virginia." Pet. App. 3a. Section 8(c)(2)(D) of the PKPA, 28 U.S.C. § 1738A(c)(2)(D), authorizes a state court to make a child-custody determination when "another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum . . . and . . . it is in the best interest of the child that such court assume jurisdiction." This basis of jurisdiction is unaffected by

---

[5] *See Dahlen v. Dahlen*, 393 N.W.2d 765 (N.D. 1986); *Long v. Long*, 439 N.W.2d 523 (N.D. 1989). The third case cited as conflicting by petitioner—*Yurgel v. Yurgel*, 15 Fla. L. Weekly S566 (Fla. Nov. 2, 1990)—is totally irrelevant. It did not involve an interpretation of the PKPA and did not even involve a situation where all parties left the state.

the parties' residence.[6] And, although the D.C. Superior Court did not expressly determine that Virginia was a "more appropriate forum," it certainly so implied.[7] The holding that jurisdiction was proper here thus had a second basis—independent of petitioner's Section 8(d) challenge.

2. The absence of error in the decision below is reason enough to deny the petition. Certainly this case is not of general importance. The opinion below was unpublished and bore a stamp indicating that it "is not to be cited or relied upon in the future." This alone means that any purported error in the opinion, or resulting "conflict," is not a matter of general concern.[8]

Finally, and in any event, the jurisdictional issue in this case is itself largely academic. It is a matter of record that petitioner has now moved to the State of Maryland and that respondent and his daughter have returned their residence to Virginia.[9] Thus, even if this Court were to reach the merits and vacate the custody order at issue here, it appears that only Virginia would have

---

[6] If Section 8(c)(2)(D) was satisfied at the time the court granted custody to respondent, the residency of the parties at that stage was irrelevant. The residency requirement in Section 8(d) applies by its terms only to the extent that a court is relying on "continuing" jurisdiction over a prior decree.

[7] There can be no doubt that, as of December 19, 1988, the Virginia court was the more appropriate forum, from all standpoints including that of the daughter. The court was intimately familiar with the parties and the relevant circumstances by the virtue of the fact that all parties had been litigating in that court continuously without objection for more than two years.

[8] Petitioner does not even suggest a conflict, independent of the decision below, warranting this Court's attention.

[9] *See, e.g.*, Order of November 30, 1990, Chancery No. 17026 (Va. Cir. Ct.) (indicating parties' current addresses).

jurisdiction to enter any further custody decree.[10] In all likelihood, the case would return to the same Virginia circuit court, which would then reinstate the now-prevailing custody arrangement. These facts, even if they do not make the present petition technically moot, certainly suggest that there would be little point in further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

PAUL M. SMITH
Counsel of Record
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184

SHARRON FITZGERALD
700 North Fairfax Street
Suite 304
Alexandria, VA 22314
Counsel for Respondent

April 2, 1991

[10] Under the PKPA, 28 U.S.C. § 1738A(c)(2), the District would have lost any basis for exercising jurisdiction and Maryland would not have any. Virginia, as the current "home state" of the child, would have jurisdiction.

(3)

No. 90-1174

FILED
APR 10 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

SHEILA JACKSON STOSSIER,
Petitioner,

v.

GERHARD SIMON STOSSIER

Petition for a Writ of Certiorari to the Court of Appeals of Virginia

---

REPLY BRIEF FOR PETITIONER

Of Counsel:
STEPHANIE RIDDER
6419 Ridge Drive
Bethesda, Maryland 20816
(301) 229-9231
For the WOMEN'S LEGAL DEFENSE FUND, INC.
1875 Connecticut Ave., N.W.
Suite 710
Washington, D.C. 20009
(202) 986-2600

BARBARA E. ETKIND *
JOHN C. BEITER
ROSS, DIXON & MASBACK
601 Pennsylvania Ave., N.W.
North Building
Washington, D.C. 20004-2688
(202) 662-2000
Counsel for Petitioner

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

CASES — Page

Dahlen v. Dahlen, 393 N.W.2d 765 (N.D. 1986) 2, 3
In re B.B.R., 566 A.2d 1032 (D.C. 1989) 6
Long v. Long, 439 N.W.2d 523 (N.D. 1989) 2, 3, 6
Rexford v. Rexford, 631 P.2d 475 (Alaska 1980) 6
Yurgel v. Yurgel, 572 So. 2d 1327 (Fla. 1990) 3

STATUTES

Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566, 3566-74 (section 8 codified at 28 U.S.C. § 1738A) .... 3, *passim*
Uniform Child Custody Jurisdiction Act,
codified in Maryland at Md. Code Ann. §§ 9-201 to -224 (1984) 4
codified in Virginia at Va. Code Ann. §§ 20-125 to -146 (1990) 4, 6, 7
Va. Code Ann. § 20-108 (1990) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1174

SHEILA JACKSON STOSSIER,
Petitioner,

v.

GERHARD SIMON STOSSIER

Petition for a Writ of Certiorari to the Court of Appeals of Virginia

---

REPLY BRIEF FOR PETITIONER

Nothing in respondent's brief in opposition ("Opp.") detracts from the reasons set forth in the Petition why further review by this Court is warranted.

1. Respondent's attempt to dismiss the square conflict of authority created by the Court of Appeals' refusal to apply the controlling federal statute is entirely unavailing. Respondent apparently concedes the PKPA's applicability here and, thus, the manifest error of the Court of Appeals' ruling that the PKPA "applies only if the Virginia court was enforcing or modifying a custody determination of a court of [another] state." App. at 3a.[1] Further, respondent also concedes that, at least in some instances, section 8(d) dictates that a court no longer has jurisdiction to modify its prior custody determination "if all parties have since left the state." Opp. at 6.

---

[1] References to the Appendix to the Petition for a Writ of Certiorari are denoted as "App."

Thus, to support his argument that section 8(d) does not control this case, respondent is left to suggest, without benefit of analysis or citation, that section 8(d) "is reasonably read not to come into play until *after* the court has made a final custody determination." Opp. at 5 (emphasis by respondent).

Specifically, respondent suggests that *Long v. Long*, 439 N.W.2d 523 (N.D. 1989), and *Dahlen v. Dahlen*, 393 N.W.2d 765 (N.D. 1986), are distinguishable because both of those cases concerned a "new action for modification" following the entry of a "final" custody order. Opp. at 6. By contrast, respondent suggests that, because the Virginia court's initial order granting custody to petitioner was merely a non-final step in a "single, ongoing proceeding," section 8(d) did not preclude that court from entertaining respondent's subsequent motion for modification the next year, even though the parties had moved away long before respondent's motion. *Id.* at 5.

Respondent's alleged distinction is without any basis either in law or fact and, in any event, is irrelevant under the PKPA. Contrary to respondent's assertion, the custody modification proceedings in *Long* and *Dahlen* were *not* considered to be "new" as opposed to "ongoing" proceedings. Rather, the trial courts in all three of these cases purported to exercise ongoing jurisdiction under the terms of their prior custody decrees. *Long*, 439 N.W.2d at 523; *Dahlen*, 393 N.W.2d at 766; App. at 3a.[2]

---

[2] Indeed, this case is substantially indistinguishable in all material respects from both *Long* and *Dahlen*. In all three cases (1) the parties resided in the forum state at the commencement of the custody proceeding; (2) the parties left the forum state after the trial court's initial exercise of jurisdiction; (3) the trial court, upon rendering an initial custody decree, purported to retain continuing jurisdiction to conduct further proceedings; (4) the noncustodial parent subsequently petitioned the same court for a modification of custody rights; and (5) that court asserted jurisdiction to modify its earlier decree, even though the parents and children no longer resided in the forum state when the modification was sought.

More importantly, respondent's characterizations of purportedly "final" custody orders, "new action[s] for modification," and "single, ongoing proceeding[s]" are afforded no jurisdictional significance under the PKPA's statutory scheme. The PKPA simply does not distinguish between "ongoing" and "new" proceedings in the same court, and does not recognize the concept of "final" custody determinations. Rather, section 8(d) must be consulted *whenever* a court purports to modify its prior custody determination, *however characterized.*[3] Indeed, the PKPA expressly provides that custody determinations governed by section 8 "include[] permanent and temporary orders, and initial orders and modifications." 28 U.S.C. § 1738A(b)(3). Simply stated, a trial court's mere intention to retain jurisdiction to conduct "ongoing" proceedings in disregard of the underlying jurisdictional facts cannot supersede the requirements of the PKPA. *See Long*, 439 N.W.2d at 525; *Dahlen*, 393 N.W.2d at 766-67 n.1.[4]

---

[3] Contrary to respondent's suggestion (Opp. at 5 n.4), petitioner readily agrees that the PKPA allows a court, once vested with valid jurisdiction, to render a custody determination even though all parties have left the forum state since the action was initiated. The PKPA, however, *does not* allow the trial court in that situation *sugsequently* to modify its determination, when all of the parties have moved out-of-state *before the modification is sought. See* 28 U.S.C. § 1738A(d).

[4] Respondent ignores the other conflicting authority from various jurisdictions that was cited in the Petition. Most strikingly, respondent dismisses the ruling in *Yurgel v. Yurgel*, 572 So. 2d 1327 (Fla. 1990), as "irrelevant." Opp. at 6 n.5. To the contrary, the Court of Appeals' refusal to enforce the requirements of the PKPA cannot be reconciled with the Florida Supreme Court's pronouncement, on the issue of a Florida trial court's continuing authority to entertain a party's subsequent motion for custody modification, that such authority continues, *inter alia*, until "jurisdiction is terminated by operation of the PKPA." 572 So. 2d at 1332. Moreover, respondent fails even to address the inescapable conflict created by the Court of Appeals' pronouncement and those of numerous other courts, in varying factual situations, that section 8(d) governs

2. Respondent does not dispute the acute importance of the uniform application of the PKPA, both to the children and parents embroiled in interstate custody disputes and to the constitutional supremacy of federal law. Instead, respondent suggests that the questions presented are "largely academic." Opp. at 7.[5] Specifically, respondent argues that if this Court were to vacate the custody order at issue, "the case would return to the same Virginia circuit court, which would then reinstate the now-prevailing custody arrangement." *Id.* at 8. This unfounded assertion is wrong for at least two reasons.

First, respondent incorrectly assumes that Virginia would be the proper forum for any later proceeding. In fact, if the status quo were reinstated by this Court, the residence of petitioner—the custodial parent under the prior decree—and thus the daughter, would be Maryland. Maryland, therefore, well might be deemed the proper forum to make any future custody determination. *See generally* Md. Code Ann. §§ 9-201 to -224 (1984) (Maryland version of Uniform Child Custody Jurisdiction Act ("UCCJA")); Va. Code Ann. §§ 20-125 to -146 (1990) (Virginia version of UCCJA); 28 U.S.C. § 1738A(c), (d), (f).[6]

---

a court's jurisdiction to modify its own prior custody determination. *See* cases cited in Petition at 8 & nn.7-8.

[5] Respondent also attempts to minimize the importance of the questions presented by noting that the Court of Appeals' decision was unpublished. Regardless of the method by which the Court of Appeals chose to announce its decision, one salient fact remains: That court—and the Virginia Supreme Court by acquiescence—have blatantly flaunted their disregard for federal law and Congress' stated intent "to establish *national standards* under which the courts . . . will determine their jurisdiction to decide [child custody] disputes." Pub. L. No. 96-611, § 7(b), 94 Stat. 3566, 3568 (emphasis added).

[6] In essence, respondent suggests that proper jurisdiction was created in Virginia when the father returned to live there with the daughter. This circular argument overlooks the fact—which must be assumed for purposes of respondent's argument—that the daugh-

Second, even if the case returned to Virginia, the outcome of any future proceeding would be far from certain. In that event, Virginia law would require a trial court to reassess the prior decree "as the circumstances of the parents and the benefit of the child[] may require." Va. Code Ann. § 20-108 (1990). Because evidence has not yet been educed regarding all of the changed circumstances over the past two years, respondent's prediction in this regard is entirely unwarranted. In any event, respondent's mere speculations cannot diminish the pressing need for authoritative guidance in defining the lower courts' obligations to accommodate the weighty federal and state interests addressed by the PKPA.

3. Finally, respondent argues that the decision below is not worthy of this Court's review because the Court of Appeals "suggested an alternative jurisdictional basis" validating the custody modification—namely, section 8(c)(2)(D) of the PKPA.[7] This argument also is unavailing for several reasons.

First, as is evident upon reading, the Court of Appeals *nowhere* cited section 8(c)(2)(D) in its opinion—in fact, the court expressly found that the PKPA *did not*

---

ter's residence in Virginia is based upon the trial court's *unauthorized* custody transfer. Clearly, the daughter's improper presence in Virginia cannot serve to validate the erroneous decision that caused it.

[7] Section 8(c)(2)(D) provides that:

> A child custody determination made by a court of a State is consistent with the provisions of this section only if[, *inter alia*,]:
>
> > (D)(i) it appears that no other State would have jurisdiction under [the other provisions of section 8(c)(2)], or another State has declined to exercise jurisdiction *on the ground that the State whose jurisdiction is at issue is the more appropriate forum to determine the custody of the child*, and (ii) it is in the best interest of the child that such court assume jurisdiction.

28 U.S.C. § 1738A(c)(2)(D) (emphasis added).

apply in cases such as this. Moreover, even if section 8(c)(2)(D) were applicable, its criteria were not met in this case. Specifically, the District of Columbia court's dismissal of petitioner's pending proceeding on December 19, 1988—*after* respondent initiated the Virginia custody modification proceeding, *after* the modification hearing, and on *the same day* that the Virginia court issued its opinion—was rendered well beyond the time at which the Virginia court was required to determine whether it had continuing jurisdiction and, thus, is irrelevant as a matter of law.[8] Further, the District of Columbia dismissal without prejudice is not the type that would vest Virginia with jurisdiction even under respondent's interpretation of the PKPA, because the District of Columbia court nowhere indicated that its order was based "on the ground that [Virginia was] the more appropriate forum to determine the custody of the child." *See* 28 U.S.C. § 1738A(c)(2)(D). Respondent concedes (Opp. at 7) that "the D.C. Superior Court did not expressly determine that Virginia was a 'more appropriate forum.'" Respondent's strained suggestion (*id.*) that the District of Columbia court nevertheless "so implied" is itself contrary to the decision in *Long v. Long*, 439 N.W.2d at 525-26.[9]

---

[8] The criteria supporting child custody jurisdiction under the PKPA must be present at the *commencement* of the relevant proceeding—in this case, the Virginia modification proceeding initiated in September 1988—occurrences later in time being irrelevant to the inquiry. *See, e.g., In re B.B.R.*, 566 A.2d 1032, 1038-40 (D.C. 1989); *cf. Rexford v. Rexford*, 631 P.2d 475, 478 (Alaska 1980) (interpreting UCCJA).

[9] Indeed, the District of Columbia court apparently was not even apprised of the jurisdictional issues in this case. Thus, the District of Columbia court's unnecessary dismissal may be explained by respondent's failure to inform the Virginia court in September 1988 of the pending District of Columbia action (as required by Va. Code Ann. § 20-132(A)(2), (C)) and the Virginia court's resultant failure to make inquiries of and consult with the District of Colum-

Although the federal and state courts have been called upon in scores of cases to interpret—with varying results—the jurisdictional provisions of the PKPA, this Court has had little opportunity to lend its authoritative guidance. Given the square conflict of authority created by the Court of Appeals' misinterpretation of those provisions, and the resultant challenge to the uniform application and supremacy of federal law, this case presents the opportunity for much needed clarification. The petition for a writ of certiorari, therefore, should be granted.

Respectfully submitted.

Of Counsel:
STEPHANIE RIDDER
6419 Ridge Drive
Bethesda, Maryland 20816
(301) 229-9231
For the WOMEN'S LEGAL DEFENSE FUND, INC.
1875 Connecticut Ave., N.W.
Suite 710
Washington, D.C. 20009
(202) 986-2600

BARBARA E. ETKIND *
JOHN C. BEITER
ROSS, DIXON & MASBACK
601 Pennsylvania Ave., N.W.
North Building
Washington, D.C. 20004-2688
(202) 662-2000
Counsel for Petitioner

April 1991

* Counsel of Record

---

bia court concerning the jurisdictional issues (as required by Va. Code Ann. § 20-129). Instead, respondent *incorrectly* informed the District of Columbia court that the Virginia court had "ongoing" jurisdiction." Joint Appendix filed with the Court of Appeals of Virginia on June 23, 1989, at 27b-27g.